

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1108

Introduced by Assembly Member Bermudez

February 21, 2003

An act to add Section 3041.5 to the Family Code, relating to family law, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1108, as amended, Bermudez. Child custody: drug testing.

Existing law requires a court to consider the habitual or continual illegal use of controlled substances, as defined, or continual use of alcohol by either parent in making a determination of the best interest of a child in child custody proceedings.

This bill would authorize a court to require any parent who is seeking custody of, or visitation with, a child who is the subject of the proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under specified circumstances. The bill would provide that the results of this testing shall be confidential *and maintained as a sealed record*. The bill would prohibit the release of the test results *to any person except as specified, or for any purpose*, except to assist the court in determining the best interest of the child and the content of the order *or judgment* determining custody or visitation. *The bill would authorize the court to order either or both parties to pay for the costs of the testing.*

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041.5 is added to the Family Code, to
2 read:

3 3041.5. In any custody or visitation proceeding brought under
4 this part ~~or Part 3 (commencing with Section 7600)~~, *as described*
5 *in Section 3021*, the court may order any parent who is seeking
6 custody of, or visitation with, a child who is the subject of the
7 proceeding to undergo testing for the illegal use of controlled
8 substances and the use of alcohol if there is a judicial determination
9 based upon a preponderance of evidence that there is the ~~illegal use~~
10 ~~of a controlled substance~~ *habitual, frequent, or continual illegal*
11 *use of controlled substances or the habitual or continual abuse of*
12 *alcohol by the parent or legal custodian*. This evidence may
13 include, but may not be limited to, a conviction within the last five
14 years for the illegal use or possession of a controlled substances.
15 The results of this testing shall be confidential ~~and may not be~~
16 ~~released~~, *shall be maintained as a sealed record in the court file,*
17 *and may not be released to any person except the court, the parties,*
18 *their attorneys, and any person to whom the court expressly grants*
19 *access by written order made with prior notice to all parties*. Any
20 *person who has access to the test results may not disseminate*
21 *copies or disclose information about the test results to any person*
22 *other than a person who is authorized to receive the test results*
23 *pursuant to this section*. The results of the test may not be used for
24 any purpose, including any criminal, civil, or administrative
25 proceeding, except to assist the court in determining, for purposes
26 of the proceeding, the best interest of the child pursuant to Section
27 3011, and the content of the order *or judgment* determining
28 custody or visitation. *The court may order either party, or both*
29 *parties, to pay the costs of the drug or alcohol testing ordered*
30 *pursuant to this section*. As used in this section, “controlled
31 substances” has the same meaning as defined in the California
32 Uniform Controlled Substances Act, Division 10 (commencing
33 with Section 11000) of the Health and Safety Code.

34 SEC. 2. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety



1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:
3 In order to ensure the safety of children who are the subject of
4 custody and visitation proceedings as soon as possible, it is
5 necessary that this act take effect immediately.

O

